



RICHARD ELÍAS
COUNTY SUPERVISOR - DISTRICT 5
CHAIRMAN OF THE BOARD

PIMA COUNTY BOARD OF SUPERVISORS

130 W. CONGRESS STREET, 11TH FLOOR
TUCSON, ARIZONA 85701-1317

TELEPHONE (520) 740-8126
FAX (520) 884-1152
E-MAIL: district5@pima.gov
WEBSITE: www.district5.pima.gov

KEITH BAGWELL
EXECUTIVE ASSISTANT

ANDREA ALTAMIRANO
SPECIAL STAFF ASSISTANT

ANNA HARPER
SPECIAL STAFF ASSISTANT

EVANGELINA QUIHUIS
SPECIAL STAFF ASSISTANT

ISABEL SEGOVIA
SPECIAL STAFF ASSISTANT

August 22, 2008

Benjamin H. Grumbles, Assistant Administrator
U.S. Environmental Protection Agency, Office of Water
1200 Pennsylvania Avenue, NW, Mail Code 4101M
Washington, D.C. 20460

Dear Mr. Grumbles:

With this letter, I present to you Pima County Resolution 2008-209. The Pima County Board of Supervisors (Board) adopted this resolution with a unanimous vote on August 18, 2008. The resolution reaffirms our support for the Clean Water Act (the Act) and its maximum application to the Santa Cruz River and its tributaries. This is necessary to protect the health and safety of our community, a Constitutional obligation that we on the Board regard very seriously.

The Federal Water Pollution Control Act was passed in 1972 and after 1977 amendments, it became known as the Clean Water Act. The U.S. Army Corps of Engineers (Corps) issued its first permit of record under the Act in Pima County, to the town of Marana, in September 1979. That October the Corps also granted a permit to the City of Tucson and subsequently, it has issued numerous permits in Pima County to protect the Santa Cruz and its tributaries.

The Corps based its determination of navigability in part, on past, present, and future potential susceptibility of the river to interstate or foreign commerce. There is little question the Santa Cruz was navigable from the ancient past until the late 1800s, when it was dammed to create lakes (Silver, Warner) that were stocked for commercial fishing and for boat rides, and it was diverted to agricultural fields. Despite these reductions to the Santa Cruz flow, a 1951 boat trip by City of Tucson Engineer Glenton Sykes and Henry Pearson, in a 14-foot rowboat, was documented in the winter 1979 issue of the Journal of Arizona History, with photographs. The article, titled "The Admiral of the Santa Cruz," was referenced in the Corp's well-researched May 2008 determination that the river deserves Traditional Navigable Waters status. Within the last decade, and as recently as this summer, individuals have kayaked portions of the Santa Cruz for recreation and for bird watching.

Our effluent ownership is diverse and there may be future decreases in the amount of effluent discharged into the Santa Cruz. However, I believe that Corps' determination of navigability is not solely dependent on the issue of effluent discharges, as the river met the criteria for navigability prior to the introduction of effluent. Though effluent flows today contribute to the flows within the river, it is my opinion that the river was not; is not now, and may not in the future be solely dependent on effluent flows for navigability and that it was, is, and may remain susceptible to interstate commerce.

There appears to be confusion within county staff and among others between pending litigation involving State of Arizona water issues versus the county's support of, and compliance with, federal regulation and Section 402 and Section 404 permitting under the Act. The Board understands that these cases are not related and that terms and definitions used in state regulation and litigation are different from the terms and definitions used by the Corps and the Environmental Protection Agency (EPA) regarding their enforcement of the Section 404 and Section 402 of the Act. The Board appreciates that the Corps' determination of Traditional Navigable Waters for the Santa Cruz has no relationship to the legally contested state efforts to define navigability on its terms.

It behooves all of us to work together to resolve the separate and distinct state navigability issues of understandable concern to Pima County. The county has made considerable investments in flood control infrastructure, riparian habitat restoration and conservation, and flood prone land acquisition. Retention of ownership and operation of these lands and improvements is critical to our ongoing efforts to protect the public health and safety as well as to our implementation of our habitat conservation program, a key element of which is to ensure the survival of riparian habitats, the rarest but most important habitat type in Arizona. The county's program requires a commitment to incorporating and integrating its Public Works Department's activities into its Section 10 Multi-Species Habitat Conservation Plan permit, also known as the Sonoran Desert Conservation Plan (SDCP). Compliance with Act regulations for the Santa Cruz and its tributaries will support and enhance the protection of these critical elements of the SDCP.

Expert scientists estimate that more than 80% of species in Arizona depend on riparian habitat at some point in their life cycle. The destruction and adverse modification of our watersheds, specifically riparian and xeroriparian habitats, have contributed to the decline of numerous species in Arizona. The American Bird Conservancy has listed southwestern riparian habitat as the fifth most-threatened habitat type in the United States. A recent memo by the Pima County Administrator mentions that nth order tributaries, or xeroriparian tributaries, covered by the Corps "very often are very small washes that frankly, in some cases, are not even regulated by Pima County's own Floodplain Management Ordinance" and that "in most cases we have always exceeded minimal standards." The fact that degradation and potential protection of any watershed begins at its nth order tributaries is significant and critical to how the county should treat these issues – with the greatest level of precaution and protection possible. I would prefer us consistently to support a higher standard than "minimal," another reason for Board support of regulation and determinations by the Corps that take this overarching view of watershed health.

With regard to county staff members' complaints about Section 404 permitting, I understand that on June 26, 2008, the Corps issued new guidance that will help immensely with these issues (Regulatory Guidance Letter Number 08-02). The county now can assume that an nth order tributary is jurisdictional for permitting and consultation with appropriate agencies regarding mitigation. This also will reduce the amount of time, effort and money spent to go through the permitting process yet ensure we are in compliance with the environmental requirements associated with our public works projects. Staff's concerns, regarding monetary and time-related costs of regulatory compliance, are important considerations and we should work to minimize unnecessary costs and delays. However, our community's water quality and environmental protections are paramount.

The county will study the opportunities to improve the timing, cost, and effectiveness of our compliance and the integration of our efforts within the framework of the SDCP. The results of our studies will be available by the end of the calendar year and will inform and assist all of us in our mutual interest of resolving these complex issues to the benefit of affected parties.

In short, Pima County Resolution 2008-209 is the stated policy of the duly elected officials of Pima County. As Chair of the Board, I wish to reassert the county's support of: the intent and purpose of the Act; at minimum the well researched scientific, cultural, and historic research of the May 2008 Corps determination of two stretches of the Santa Cruz as Traditional Navigable Waters; EPA consideration of the entire Santa Cruz as a Special Case and deserving Traditional Navigable Waters status; enactment of the Clean Water Restoration Act (House Bill 2421 and Senate Bill 1870). The Board wants the Santa Cruz and other watercourses in the county to receive the continued greatest possible protection under the Act. It seeks cooperative action of the county, the Arizona Governor, our Congressional representatives, the EPA, the Corps, and other interested parties in resolving issues and implementing the highest standards of protection, and restoration, of the entire Santa Cruz watershed.

I hope you find the attached resolution and additional information useful. Please contact me if you want to discuss further these issues of mutual concern.

Sincerely



Richard Elías, Chairman
Pima County Board of Supervisors

cc: Honorable John Paul Woodley
Assistant Secretary, Civil Works
108 Army Pentagon, Room 3E446
Washington DC 20310

Mr. Wayne Nastri, Regional Administrator
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street (ORA)
San Francisco, CA 94105

Colonel Thomas Magness, Chief Engineer
Los Angeles District
Army Corps of Engineers
P.O. Box 2711
Los Angeles, CA 90053-2325

Mr. David Smith, Chief
Wetlands Regulatory Office (WTR-8)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Honorable Janet Napolitano, Governor
State of Arizona
1700 West Washington
Phoenix, Arizona 85007